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**Federal Communications Commission**

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Jason Kaltenbach	)	File Number: EB-05-LA-238
d/b/a/ Metamerchant	)	
	)	NAL/Acct. No.: 200732900001
Laguna Nigel, California	)	FRN: 0004224713

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Released: November 9, 2006

By the District Director, Los Angeles Office, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Jason Kaltenbach ("Kaltenbach") d/b/a/ Metamerchant in Laguna Nigel, California, apparently willfully and repeatedly violated Section 302(b) of the Commissions Act of 1934, as amended ("Act"),<sup>1</sup> and Section 2.803(a)(1) of the Commission's Rules ("Rules")<sup>2</sup> by offering for sale non-certified VHF and UHF transceivers. We conclude, pursuant to Section 503(b) of the Act,<sup>3</sup> that Kaltenbach is apparently liable for a forfeiture in the amount of fourteen thousand dollars (\$14,000).

**II. BACKGROUND**

2. On September 1, 2005, an agent from the Enforcement Bureau's Los Angeles Office ("Los Angeles Office") visited Ebay's website. The agent observed two models of "KYD" brand VHF and UHF transceivers, specifically, one capable of operating on 136 MHz – 174 MHz at three watts, and the other, capable of operating on 400 MHz – 470 MHz at four watts. A review of the Commission's records revealed these devices had not received an equipment authorization from the Commission, which is required for transceivers operating on these frequencies.<sup>4</sup>

3. On January 20, 2006, the Los Angeles Office issued a Citation to Jason Kaltenbach d/b/a Metamerchant for violation of Section 302(b) of the Act, and Section 2.803(a)(1) of the Commission's Rules by offering for sale, non-certified General Mobile Radio ("GMRS") and Multi Use Radio Service

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<sup>1</sup> 47 U.S.C. § 302(b).

<sup>2</sup> 47 C.F.R. § 2.803(a)(1).

<sup>3</sup> 47 U.S.C. § 503(b).

<sup>4</sup> Such devices are intentional radiators and must be certificated by the Commission prior to marketing. See 47 C.F.R. § 15.201(a).

("MURS") transceivers.<sup>5</sup> In the Citation, the Los Angeles Office warned Kaltenbach that future violations might subject him to civil monetary forfeitures not to exceed \$11,000 for each violation or each day of a continuing violation,<sup>6</sup> seizure of equipment through *in rem* forfeiture action, and criminal sanctions including fines and imprisonment.<sup>7</sup>

4. In a response dated February 1, 2006, Kaltenbach stated that the equipment had been accidentally listed as GMRS and MURS- type radios and that he "immediately removed those items and corrected [the] website pages with the correct information."

5. On February 11, 2006, an agent from the Los Angeles Office revisited Ebay's website. The agent observed keypad programmable unbranded FM transceivers being offered for sale via an auction by Metamerchant. On March 5, 2006, the Los Angeles agent purchased a VHF FM transceiver via auction from Metamerchant. The item received by the agent, a "KYD TK-238 FM transceiver," capable of operating on 136 MHz – 174 MHz at four watts, did not have a label indicating that it had been certificated by the Commission. A search of the Commission's equipment database revealed no equipment certification had been issued for the KYD TK-238 VHF FM transceiver.

6. On July 11, 2006, an agent from the Enforcement Bureau's Seattle Office received a complaint from a purchaser of equipment from Metamerchant on Ebay. The complainant showed the Seattle agent a UHF FM transceiver he had purchased which did not display an FCC identification number or any indication that the device had been certificated by the Commission. The transceiver was model "KYD TK-338" capable of operating on 400 MHz – 470 MHz at four watts. The Seattle agent researched the transceiver and then sent this information to the Commission's Office of Engineering and Technology which confirmed that this device was not certificated and could not be certificated as operation in the 400 MHz MURS frequency range only permits usage at two watts.<sup>8</sup>

### **III. DISCUSSION**

7. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>9</sup> The term "repeated" means the commission or omission of such act more than once or for more than one day.<sup>10</sup>

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<sup>5</sup> Citation to Jason Kaltenbach d/b/a Metamerchant, C2006329002, (Enf. Bur., Western Region, Los Angeles Office, released January 20, 2006) ("Citation").

<sup>6</sup> See 47 C.F.R. § 1.80(b)(3).

<sup>7</sup> See 47 C.F.R. §§ 501, 503(b), 510.

<sup>8</sup> See 47 C.F.R. § 95.639(h).

<sup>9</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

<sup>10</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

8. Section 302(b) of the Act provides that “[n]o person shall manufacture, import, sell, offer for sale, or ship devices or home electronic equipment and systems, or use devices, which fail to comply with regulations promulgated pursuant to this section.”<sup>11</sup> Section 2.803(a)(1) of the Rules provides that “[e]xcept as provided elsewhere in this section, no person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless in the case of a device subject to certification such device has been authorized by the Commission . . . .”<sup>12</sup>

9. Radio transceivers operating in the 136 MHz – 174 MHz and the 400 MHz – 470 MHz bands are subject to the equipment certification process and must be certified and properly labeled prior to being marketed or sold in the United States.<sup>13</sup> On January 20, 2006, the Los Angeles Office issued a Citation to Kaltenbach concerning his marketing of non-certified VHF and UHF transceivers. Since the issuance of the Citation, however, Kaltenbach has continued to offer for sale uncertified VHF and UHF transceivers. Kaltenbach was aware the devices he is offering for sale are not certified, therefore, his violation was willful. The violation occurred on more than one day, therefore, it was repeated. Based on the evidence before us, we find that Kaltenbach apparently willfully and repeatedly violated Section 302(b) of the Act and Section 2.803(a)(1) of the Rules by offering for sale non-certified VHF and UHF transceivers.

10. Pursuant to *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, (“*Forfeiture Policy Statement*”),<sup>14</sup> and Section 1.80 of the Rules,<sup>15</sup> the base forfeiture amount for marketing unauthorized equipment is \$7,000 per violation.<sup>16</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.<sup>17</sup> Kaltenbach offered for sale two models of non-certified VHF and UHF transceivers, in violation of Section 302(b) of the Act and Section 2.803(a)(1) of the Rules. Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we find that Kaltenbach is apparently liable for a \$14,000 forfeiture.

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Jason Kaltenbach d/b/a/ Metamerchant is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of fourteen thousand dollars (\$14,000) for willfully and repeatedly violating Section 302(b) of the Act, and Section 2.803(a)(1) of the Rules.<sup>18</sup>

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<sup>11</sup> 47 U.S.C. § 302(b).

<sup>12</sup> 47 C.F.R. § 2.803(a)(1).

<sup>13</sup> See 47 C.F.R. §§ 2.907, 2.927(a).

<sup>14</sup> 12 FCC Rcd 17087 (1997), *recon. denied* 15 FCC Rcd 303 (1999).

<sup>15</sup> 47 C.F.R. § 1.80.

<sup>16</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>17</sup> 47 U.S.C. § 503(b)(2)(D).

<sup>18</sup> 47 U.S.C. §§ 302(b), 503(b); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 2.803(a)(1).

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**Federal Communications Commission**

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12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Jason Kaltenbach d/b/a/ Metamerchant **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Los Angeles District Office, 18000 Studebaker RD., Suite 660, Cerritos, CA 90703 and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1A625, Washington, D.C. 20554.<sup>19</sup>

17. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Jason Kaltenbach at his address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Catherine Deaton  
District Director  
Los Angeles District Office  
Western Region  
Enforcement Bureau

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<sup>19</sup> See 47 C.F.R. § 1.1914.